

**IN THE SUPREME COURT**

**APPEAL FROM THE [COURT OF APPEALS AND WAYNE COUNTY CIRCUIT COURT]  
[HON. CYNTHIA D. STEVENS , CIRCUIT COURT JUDGE]**

\* \* \* \* \*

**RONALD M. NASTAL and  
IRENE NASTAL, his wife,**

*Plaintiffs/Appellees,*

*v*

**HENDERSON & ASSOCIATES  
INVESTIGATIONS, INC., a  
Michigan corporation, NATHANIEL  
STOVALL and ANDREW CONLEY,**

*Defendants/Appellants.*

Supreme Court No.: 125069

COURT OF APPEALS No.: 241200

WAYNE COUNTY CIRCUIT COURT  
CASE No. 00-030589-NZ  
HON. CYNTHIA D. STEVENS

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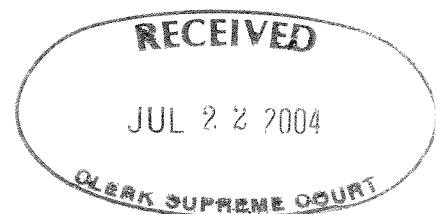
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**BRIEF OF AMICI CURIAE IN  
SUPPORT OF APPELLANTS**



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### **INTEREST OF AMICI**

This brief is submitted on behalf of amici curiae McMurray, Baio and Associates in support of the Appellants in this appeal. McMurray, Baio and Associates are primarily a workers compensation defense law firm. Our clients, workers compensation insurance carriers, engage in hiring investigators, such as the Appellants, for the purpose of surveillance to ascertain whether or not a particular claimant has a legitimate or claim or not. It is common practice industry-wide to order two to three days of surveillance. It is also common practice that if the investigation is potentially or actually discovered that the surveillance for that particular day is discontinued. The point is that, surveillance is not completely discontinued once surveillance is discovered. Surveillance activities are normally resumed, the next day, the next week, or when the investigator believes in their professional opinion that a sufficient “cooling off” period has taken place. Should the Court decide that there is no longer a legitimate purpose to any further surveillance activities once an actual or even a potential discovery is made, then the effects are possibly devastating towards the defense of not only workers compensation claims, but numerous other types of claims as well, i.e. personal injury, various tort claims, etc. Surveillance activities are crucial for insurance companies, defense carriers, and defense attorneys. Therefore, the issue in this appeal is that this Honorable Court should find as a matter of law that the legitimate purpose of surveillance activities can never fall under Michigan’s stalking statute, even if the surveillance is continued once the surveillance is discovered.

### **ARGUMENT**

The criminal stalking statute, MCL 750.411h, defines Michigan’s civil stalking statute, MCL 600.2954. Stalking is thereby defined by the criminal stalking statute as

being “a willful course of conduct involving repeated or continuous harassment of another individual.” MCLA 750.411h(1)(d). Harassment, according to the criminal stalking statute “does not include constitutionally protected activity or conduct that serves a legitimate purpose.” MCLA 750.411h(1)(c). Surveillance generally falls under the category of conduct that serves a legitimate purpose. There are no guidelines set forth within the statute that dictates when conduct that serves a legitimate purpose is no longer legitimate. We would stress the same here. If surveillance activities fall in the category of conduct that serves a legitimate purpose, then surveillance activities continue to serve a legitimate purpose even if it is compromised. While it is possibly true that the information obtained from a compromised surveillance is not as good of information, it certainly does not rise to the level of stalking. Generally, surveillance is discontinued once it is compromised because the information obtained is worthless. However, resuming surveillance at a later time is neither useless nor prohibited. In fact, there are many instances when the resuming of surveillance activities at a later time provides very useful information.

Should the Court decide that surveillance discontinues to serve a legitimate purpose once the surveillance is compromised, then the Court should also specifically outline the following: what comprises a compromised surveillance, when is the surveillance deemed compromised, is the “victim” required to declare to the investigator or insurance carrier that they have knowledge of the surveillance to put them on notice for future surveillance, how will the investigator know when the surveillance has shifted from legitimate to illegitimate, can an insurance carrier hire a different investigation company for future surveillance or are they forever barred from any future surveillance once it is compromised. Defense insurance companies rely on surveillance as a part of their investigation into a claim. To determine that surveillance has become an activity

without a legitimate purpose would potentially harm the public. Surveillance deters those that choose to defraud the insurance companies. If the insurance companies are defrauded regularly without the restraint of surveillance then it is the public who will have to pay in the form of increased premiums. Claimants who legitimately suffer from an injury have nothing to hide and no reason to fear surveillance. It is those claimants who misuse the legal system that fear surveillance and cry for restraint.

### **CONCLUSION**

For the foregoing reasons, the judgment of the Court of Appeals should be reversed as to the claim for stalking.

Respectfully submitted,

Date: July 21, 2004

A handwritten signature in cursive script, reading "Michelle L. Pinter", written over a horizontal line.

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**PROOF OF SERVICE**

Tina Chapman, first being duly sworn, deposes and says that on the 21 day of July 2004, she did serve a copy of the following:

*Brief of Amici Curiae in Support of Appellants* and this *Proof of Service* upon all parties of record.

By    ☒    **U.S. Mail**  
      ☐    Hand Delivery  
      ☐    Federal Express  
      ☐    FAX

I declare under the penalty of perjury that the statements above are true to the best of my knowledge, information and belief.

  
Tina Chapman